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MEDTRONIC VASCULAR, INC.
IP LEGAL DEPARTMENT
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SANTA ROSA CA 95403

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JUN 06 2005

OFFICE OF PETITIONS

In re Application of :
Victor I. Chomensky :
Application No. 10/010,911 : DECISION ON PETITION
Filed: 20 November, 2001 :
Atty Docket No. P775 CON 3 :
:

This is a decision on the petition filed on 10 May, 2005 (certificate of mailing date 13 July, 2004), under 37 CFR 1.137(b)¹, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

The application became abandoned on 5 December, 2003, for failure to timely file a response to the Notice of Non-Compliant Amendment mailed on 4 November, 2003, which set a one (1) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 14 June, 2004.

A review of Office financial records reveals that the deposit account for which authorization is provided, No. 50-2090, contains a balance of \$0.00. Therefore the Office cannot charge the required petition fee.

In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. As petitioner has not asserted any grounds for the withdraw of the holding of abandonment, the petition must be dismissed. The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.²

Any renewed petition should include payment of the petition fee.

The address listed on the petition is different than the correspondence address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

²See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the
undersigned at (571)272-3231.



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